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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,220	01/16/2001	Keiichi Hayashi	Q62674	9946

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EXAMINER

PEREZ, JULIO R

ART UNIT	PAPER NUMBER
2681	8

DATE MAILED: 03/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/759,220

Applicant(s)

HAYASHI, KEIICHI

Examiner

Julio R Perez

Art Unit

2681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5.6.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 01/12/04 have been fully considered but they are not persuasive. The applicant argues that Yoshino does not disclose or suggest a browser function or a server apparatus. It is the examiner's opinion that the portions cited do support the above assertion: the portable device includes an external device and an external interface for inputting musical scale information from the external device; the portable phone further consists of display means for visually indicating musical scale information store in the storage section allowing the user to verify musical information; therefore, providing means for the user to transfer musical data; thus, providing browser means to the terminal for musical information selection (col. 2, lines 64-67; col.3, lines 1-10); Furthermore, the external device is, indeed, considered a server as the claim is written broadly; therefore, having means for transferring data to the terminal (col. 7, lines 37-40). Furthermore, the musical scale data stored in the external device, which, indeed, is a repository of data therein data can consequently be downloaded or manipulated in some manner, this indeed suggests a browser and a server, can be transferred to the portable cellular phone (col. 8, lines 6-9).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Yoshino (6308086).

Regarding claim 1, Yoshino discloses a mobile communication terminal (portable cellular phone, col. 1, line 49) equipped with a browser function (musical scale information can be transferred, acquire, from a distant device through means of radio-communication function based on a radio wave, col. 8, lines 9-14 and 43-49), comprising: means for fetching melody data (col. 8, lines 43-49) from a server apparatus (from a distant device through radio wave communication, col. 8 lines 11-14) by using said browser function (the cellular phone comprises an external interface to for inputting musical scale information (tones), col. 7, lines 37-40); and tone setting

means for setting ringing tones (ringing tone setting, col. 8, lines 16-17) based on tone information contained in said melody data (musical scale information stored, col. 4, lines 47-49).

Regarding claims 2 and 9, Yoshino discloses a mobile communication terminal, wherein if said melody data contains no tone information, said tone setting means sets a ringing tone based on preset tone information (if melody or tone information is not needed, ringing tone will have to stay as preset, col. 7, lines 15-18).

Regarding claims 3 and 10, Yoshino discloses a mobile communication terminal, wherein if said melody data (musical scale signal from musical scale information; col.1, lines 60-61) contains tone information, said tone setting means judges the validity of said tone information (col. 7, lines 11-14 and 22-25).

Regarding claims 4 and 11, Yoshino discloses a mobile communication terminal, wherein said tone setting means sets ringing tones by performing a modulation processing based on said tone information contained in said melody data. (The desired extracted audio signal frequencies have to be converted to a suitable form for output transducer, which, in fact, includes signal modulation; therefore, modulation must have taken place, col. 4, lines 32-40.)

Regarding claims 5 and 12, Yoshino discloses a mobile communication terminal; wherein said tone information contained in said melody data constitutes tone parameters (by computation means extracts frequency components (parameters) from the audio signal corresponding to a musical scale (tone information), col. 4, lines 34-36) used for said modulation processing.

Regarding claims 6 and 7, Yoshino discloses a mobile communication terminal, further comprising: ringing-speed setting means (by controlling the periodicity suited to the rhythm, the rhythm of the melody to be reproduced, played, can be changed by means of a timing signal, col. 2, lines 54-55 and col. 6, lines 16-19) for setting a tempo (the relative speed at which music is or ought to be played, col. 6, lines 25-27) at which a melody is played in accordance with said melody data.

Regarding claim 8, Yoshino discloses a ringing method for a mobile communication terminal equipped with a browser function (the device can download (transfer) data from a distant device (server), col. 8, lines 9-13), comprising: having access to a server equipment (may have access to an external source to input musical scale information, col. 7, lines 37-40) by means of said browser function; notifying (a control section provides instructions (requests or notifies), col. 7, lines 51-56) said server equipment of desired melody data in conformity with said access; receiving said desired melody data from said server equipment (col. 7, lines 55-61); storing said received desired melody data (musical scale information stored, col.4, lines 47-50); judging whether said stored melody data stored (col. 7, lines 11-14 and 22-25) contains tone information; fetching said tone information (extracting, col. 4, lines 56-63 and col. 8, lines 43-49) if it is judged that said melody data contains the tone information; setting a tone for playing a melody ((ringing tone setting, col. 8, lines 16-17) in accordance with said melody data, based on said fetched tone information; and playing said melody (musical scale information (tones), col.8, lines 21-23) in said set tone.

Regarding claims 13 and 14, Yoshino discloses a ringing method for a mobile communication terminal, further comprising a ringing-speed setting step (by controlling the periodicity suited to the rhythm, the rhythm of the melody to be reproduced, played, can be changed by means of a timing signal, col. 2, lines 54-55 and col. 6, lines 16-19) of setting a tempo (the relative speed at which music is or ought to be played, col. 6, lines 25-27) at which a melody is played in accordance with said melody data.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julio R Perez whose telephone number is (703) 305-8637. The examiner can normally be reached on Monday - Friday, 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Erika Gary can be reached on (703) 308-0123. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JP

3/17/04


ERIKA GARY
PATENT EXAMINER